Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendments to Part 65, Interstate	)	CC Docket No. 96-22
Rate of Return Prescription Procedures	)	
and Methodologies, Subpart G, Rate Base	)	

NYNEX COMMENTS

I. INTRODUCTION

The NYNEX Telephone Companies (NYNEX)[1] file these Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) released March 7, 1996, in the above-captioned matter.

The NPRM proposes amendments to the Commission's Part 65 rate base rules (47 C.F.R. Part 65) with respect to prepaid other postretirement benefits (OPEBs) costs in Account 1410, Other Noncurrent Assets, and all items in Account 4310, Other Long-Term Liabilities, including accrued liabilities related to OPEBs.

II. ACCRUED BUT UNFUNDED OPEB COSTS SHOULD BE REMOVED FROM THE INTERSTATE RATE BASE

NYNEX agrees with the Commission's proposal (NPRM ¶ 32) to deduct unfunded OPEB costs from the rate base. This proposal provides the least onerous method of taking into account the economic impact of the differences between cost recognition and the corresponding payment of funds.

[1] The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

The Commission has recognized that the recovery of accrued expenses, while they remain unpaid, makes available capital to invest in plant which is includable in the rate base, and which earns a return for investors.[2] However, as the Commission has also recognized, since investors have not provided this capital, they should not receive a return on it.[3] Several methods have been utilized to ensure that ratepayers do not pay a return on such capital. One method used at one time by the Commission but later rejected was to adjust the determination of the required rate of return to take into account capital with zero cost (i.e., funds not provided by investors on which no interest or dividends are paid).[4] Another method is to reduce the rate base by the amount of the liability, resulting in a direct offset to the telephone plant which is not supported by investor capital. Finally, accrued expenses may be included in a lead-lag study to determine the cash working capital allowable in the rate base. A payment lag results in reducing the cash working capital allowance. In its last comprehensive interstate rate base docket (CC Docket No. 86-497), the Commission considered treating short-term liabilities -- such as accounts payable, taxes payable, advance billing and payments -- as reductions to the rate base. Ultimately, the Commission determined that these items should be taken into account in lead-lag studies, and therefore the Commission did not require rate base reductions for these items.[5]

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2 See NPRM at ¶ 33 & n. 78.

3 Id.

4 See Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies, CC Docket No. 84-800, Phase II, Report and Order, 52 Fed. Reg. 1795 (1986), recon., 104 FCC2d 1404 (1986).

5 See Amendment of Part 65, 3 FCC Rcd. 269, ¶ 57 (1987).

With regard to the treatment of unfunded OPEB costs, Sections 65.820(d) and (e) of the Commission's Rules require that Class A carriers calculate a cash working capital allowance either by performing a "lead-lag study of interstate revenue and expense items," or by using a formula including a determination of "average lag days for interstate expenses paid in arrears." Currently accrued OPEB costs will be paid out over a long period of time, with many of the costs being paid far into the future. Estimating the payment lag would be quite burdensome, involving actuarial calculations, similar to the manner in which the OPEB costs themselves are calculated. A direct rate base reduction for the unpaid liability offers a more straightforward, easily verifiable, less onerous method of accounting for these zero cost funds.

In its AAD 92-65 Memorandum Opinion and Order accompanying the NPRM, the Commission for procedural reasons only has rescinded that portion of Responsible Accounting Officer Letter No. 20 (RAO 20) addressing the rate base treatment of prepayments and accrued liabilities related to OPEBs.[6] However, reducing the rate base for unfunded OPEBs is clearly consistent with FCC long-standing substantive policy to remove zero cost sources of funds from the rate base.[7] NYNEX has been following that approach since 1993, when Statement of Financial Accounting Standards No. 106 (SFAS-106) on OPEBs was implemented, and intends to proceed with that treatment pending the Commission's decision in this matter.[8] Should the Commission consider a

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6 See NPRM at ¶ 27; AAD 92-65 Order at ¶ 25; RAO 20, 7 FCC Rcd. 2872 (CCB 1992).

7 See NPRM at ¶ 33 & n. 78.

8 In the same way, NYNEX since 1994 has been reducing its rate base for unfunded costs arising from implementation of SFAS-112 relating to other post-employment benefits.

waiver under Rule 1.3 to be appropriate to support such treatment, NYNEX hereby requests such a waiver.

While stating it does not favor a delay, the Commission in the NPRM nevertheless also invites comment on whether Part 65 modifications should be delayed pending resolution of investigations of OPEB tariffs.[9] NYNEX adheres to the position taken in its original Comments filed August 12, 1992 (in AAD 92-65), that the rate base treatment of OPEB costs under SFAS-106 should not bear any necessary relation to whether these costs are treated as exogenous. The standards for and policies to be served by these two determinations are different,[10] and FCC price cap regulation has essentially broken any direct or close link between costs and rates.[11] Pursuant to RAO 20, those OPEB costs are recognized as regulated, above-the-line items, and arguably those costs are being recovered to the extent a carrier is earning a profit. To ignore the rate base effect of OPEBs in earnings calculations would also conflict with the Commission's treatment of depreciation. That is, under FCC price cap regulation, depreciation expense changes have been treated as endogenous and above-the-line, and the related accumulated depreciation has been deducted from rate base.

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9 NPRM at ¶ 28.

10 See Southwestern Bell Tel. Co. v. FCC, 28 F.3d 165 (D.C. Cir. 1994); AAD 92-65 Order released March 7, 1996, n. 3; LEC Price Cap Order, CC Docket No. 94-1, 5 FCC Rcd. 6768, 6807 (1990).

11 See LEC Price Cap Review Order, CC Docket No. 94-1, 10 FCC Rcd. 8961, ¶¶ 27-28, 274 (1995).

III. OTHER LONG-TERM LIABILITIES SHOULD BE REFLECTED IN LEAD-LAG STUDIES TO THE EXTENT PRACTICABLE

The Commission also is considering whether to include all of Account 4310, Other Long-Term Liabilities, as a rate base deduction.[12] NYNEX believes that the principles and approaches put forth by the Commission in Docket 86-497 should continue to apply. That is, to the extent practicable, accrued expenses should be taken into account in lead-lag studies, as discussed above. Certain accrued expenses, whose payment terms are either far out into the future or not readily determinable or certain, do not easily lend themselves to lead-lag studies. Those accrued expenses, such as pensions and deferred taxes, should be taken into account as rate base deductions. NYNEX's chart of accounts includes the following items under Account 4310: Pensions, OPEBs, Other Post-Employment Benefits (SFAS-112), Structured Settlements, Senior Management Savings Plan, and Other. For Pensions, OPEBs and Other Post-Employment Benefits (SFAS-112), it is extremely difficult to calculate the payment lag, and therefore these liabilities should be deducted from the rate base. Items such as Structured Settlements and Savings Plan liabilities are easily taken into account in lead-lag studies. The Other category includes liabilities not recorded elsewhere. This category includes some non-operating or below-the-line items, which should not be taken into account either in lead-lag studies or in rate base. The Other category also includes certain operating items such as contingent liabilities. The rate base treatment of such items should be determined on a case-by-case basis, with the primary consideration being whether the item is properly includable in a lead-lag study.

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[12] See NPRM at ¶¶ 33-34.

IV. CONCLUSION

NYNEX supports the Commission's proposal to confirm, without delay, the substance of RAO 20 on the rate base treatment of prepayments and accrued liabilities relating to OPEBs. For other items in Account 4310, Other Long-Term Liabilities, a more selective approach should be followed utilizing lead-lag studies to the extent practicable.

Respectfully submitted,

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